

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	Criminal Case No. 10-2626
)	
Plaintiff,)	Bonito Courtroom
)	Albuquerque, New Mexico
v.)	June 21, 2013
)	2:11 p.m.
PEDRO LEONARDO MASCHERONI,)	
)	
Defendant.)	

TRANSCRIPT OF PLEA HEARING

Before the Honorable William P. Johnson
United States District Judge

APPEARANCES:

For the Plaintiff:	Dean S. Tuckman, Esq. Fred J. Federici, III, Esq. Holland S. Kastrin, Esq. P. O. Box 607 Albuquerque, NM 87103
For the Defendant:	Robert R. Cooper, Esq. 1011 Lomas Blvd., NW Albuquerque, NM 87102
	Kirtan K. Khalsa, Esq. 812 Marquette Ave., NW Albuquerque, NM 87102
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1 Proceedings recorded by mechanical stenography, transcript
2 produced by computer-aided transcription.

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1 (In session at 2:11 p.m.)

2 THE COURT: Thank you. Please be seated.

3 All right. This is the case of United States versus
4 Pedro Leonardo Mascheroni, 10CR2626.

5 Would counsel enter their appearances, please?

6 MR. DEAN TUCKMAN: Good afternoon, Your Honor. Dean
7 Tuckman on behalf of the United States, here with Fred Federici
8 and Holland Kastrin.

9 MR. ROBERT COOPER: Good morning -- good afternoon,
10 Your Honor. Robert Cooper, Kirtan Khalsa, and Richard
11 Winterbottom on behalf of Dr. Mascheroni. He is present this
12 afternoon.

13 THE COURT: Has counsel had sufficient time to meet
14 and confer with Dr. Mascheroni?

15 MR. COOPER: Yes, Your Honor, we have.

16 THE COURT: Are you and Dr. Mascheroni ready to
17 proceed?

18 MR. COOPER: We are.

19 THE COURT: All right. You all may come on up to the
20 podium.

21 As soon as your lawyers are ready, then we'll
22 proceed.

23 MR. TUCKMAN: Sorry, Judge, checking on one thing.

24 THE COURT: Dr. Mascheroni, sir, if you would, would
25 you raise your right hand so you can be placed under oath.

1 (Defendant sworn under oath.)

2 THE CLERK: Please state your full name for the
3 record. Your full name for the record.

4 THE DEFENDANT: My what?

5 THE CLERK: Your full name.

6 THE COURT: Just if you would, sir, state your name.

7 THE DEFENDANT: Pedro Leonardo Mascheroni.

8 THE COURT: Dr. Mascheroni, do you understand that
9 you're under oath now?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And the reason I ask you that question is
12 I have to ask you a whole series of questions, and I just want
13 to make sure you understand that, if you answered any of those
14 questions falsely, you could be charged with the offense of
15 perjury, or making a false statement under oath. Do you
16 understand that, sir?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Would you state your date of
19 birth, please?

20 THE DEFENDANT: July 20, 1935.

21 THE COURT: Now, in terms of your education, am I
22 correct that you're a Ph.D. physicist, sir?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And you obtained your Ph.D. at UC
25 Berkeley?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And in terms of that's been your
3 discipline and your training in your professional life is in
4 the field of physics; is that right, sir?

5 THE DEFENDANT: Yes.

6 THE COURT: And this is a question I'm required to
7 ask every defendant. Have you been treated recently for any
8 kind of mental illness or any kind of addiction to narcotic
9 drugs?

10 THE DEFENDANT: I was never treated from any problem
11 like that.

12 THE COURT: Okay. And then are you currently under
13 the influence of any drug, medication, or alcoholic beverage of
14 any kind?

15 THE DEFENDANT: No.

16 THE COURT: Okay. And this is a formality, but let
17 me ask counsel, counsel, you're satisfied that Dr. Mascheroni
18 is fully competent to enter an informed plea; is that right?

19 MR. COOPER: Yes, Your Honor.

20 THE COURT: Okay. Now, Dr. Mascheroni, there are
21 some preliminary questions before we get into the -- the Plea
22 Agreement, but there's, as I understand it, this plea is to
23 some charges that are in what's called an Information and then
24 some charges that are in the Indictment that was -- went to the
25 grand jury. Now, I've been handed the document entitled,

1 "Information." Did you have an opportunity to read and discuss
2 the Information with your attorneys?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And then in terms of the -- was it an
5 indictment or a superseding indictment?

6 MR. TUCKMAN: It was an indictment, Your Honor.

7 THE COURT: And then in terms of the Indictment,
8 which was the document that was -- the government presented to
9 the grand jury and then you were indicted, did you have an
10 opportunity to read and discuss the charges that are in the
11 Indictment?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you discussed that with your lawyers?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Now, let me find which one I'm --
16 there's a document here entitled, "Waiver and Consent to
17 Proceed with Counsel After Receiving Independent Advice
18 Concerning" -- I'm sorry, I'm at the wrong document. Here's
19 what I'm looking for, a document entitled, "Waiver of
20 Indictment," where in blue ink above where the line that says,
21 "Pedro Leonardo Mascheroni," is that your signature, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And so you talked with your
24 counsel about you could -- you have the right to be -- to
25 proceed by an indictment, and by executing this Waiver of

1 Indictment, you are agreeing to proceed to those charges in the
2 Information. Do you understand that, sir?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And then you read and discussed this
5 waiver form with your counsel before you signed it?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Now, let me inquire, are you
8 satisfied with the legal counsel, legal representation, and
9 legal advice given to you in this case by your counsel,
10 Mr. Cooper, Ms. Khalsa, and then special counsel
11 Mr. Winterbottom?

12 THE DEFENDANT: I enjoyed one of them more than the
13 others, but I am going to keep it private. I like them all.

14 THE COURT: Okay. All right, sir. Now, there's also
15 a document up here that is entitled, "Waiver and Consent to
16 Proceed with Counsel After Receiving Independent Advice
17 Concerning Possible Future Conflict of Interest." Now,
18 Mr. Winterbottom, on page -- I'm going to go in reverse order.
19 On Page 4, that's your signature, right?

20 MR. RICHARD WINTERBOTTOM: It is, sir.

21 THE COURT: And then on Page 3, Dr. Mascheroni,
22 that's your signature?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you had an opportunity to read and
25 discuss this document with Mr. Winterbottom before you signed

1 it; is that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you understand the contents of and
4 you discussed this at length with Mr. Winterbottom; is that
5 right, sir?

6 THE DEFENDANT: He's a very good lecturer, sir.

7 THE COURT: I would agree. He's practiced in front
8 of me many years. So you understand this document?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Mr. Winterbottom, from your
11 perspective, is there anything else I need to ask
12 Dr. Mascheroni regarding the -- this waiver and consent form?

13 MR. WINTERBOTTOM: No, Your Honor.

14 THE COURT: All right. All right. Now, we're
15 getting to, I think, the last document, but this is the one
16 that's kind of thick. I've been handled -- handed a document
17 entitled, "Plea Agreement." Now, on Page 31, the very last
18 page, the very last signature space above where it says, "Pedro
19 Leonardo Mascheroni," is that your signature, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you had an opportunity to read and
22 discuss this document at length with your counsel before I
23 commenced this hearing; is that right, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Do you understand the terms of

1 this Plea Agreement?

2 THE DEFENDANT: Not completely in terms of the law
3 then -- the -- the 2274(a), (b), and things like this, but I am
4 satisfied with the teaching that I got from this person.

5 THE COURT: From Mr. Winterbottom?

6 THE DEFENDANT: Right.

7 THE COURT: Okay. So you believe that you're
8 informed, and you are comfortable moving forward?

9 THE DEFENDANT: Yes. I am also -- he is a very good
10 teacher, but I just want to keep the balance.

11 THE COURT: Okay. All right. As far as whatever
12 agreement that has been reached with the United States on the
13 resolution of these charges, that agreement's contained within
14 this 31-page document; is that right, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And the kind of the follow-up question to
17 that, and I always ask this of -- of individuals, there's, in
18 other words, there's not any oral side deals out there.
19 Whatever agreement there is, it's in the four corners of this
20 31-page document?

21 THE DEFENDANT: Within my understanding, sir.

22 THE COURT: Right. And I think that's the
23 understanding of the United States.

24 MR. TUCKMAN: That's right, Your Honor.

25 THE COURT: And that's the understanding of defense

1 counsel; is that right?

2 MR. WINTERBOTTOM: It is.

3 THE COURT: Okay. And it's my understanding as well.
4 Now, your decision to enter into this Plea Agreement, it's a
5 voluntary decision that you made on your own after consulting
6 with your counsel?

7 THE DEFENDANT: Very painful, very difficult, but I
8 was able to make it.

9 THE COURT: And it's your own decision?

10 THE DEFENDANT: It is my own decision. It was a very
11 painful decision, but I made it.

12 THE COURT: All right. Now, Mr. Tuckman, this is an
13 11(c)(1)(C) Plea Agreement.

14 MR. TUCKMAN: That's right, Your Honor.

15 THE COURT: Okay. And so, Dr. Mascheroni, they --
16 there's a term in -- this Plea Agreement, there are different,
17 under the statute, there -- or the rules, there are different
18 types of plea agreements. This one is called an 11(c)(1)(C)
19 Plea Agreement, so what this means is the presiding judge in
20 the case, if I accept the Plea Agreement, then I'm -- I'm
21 agreeing myself to be bound by the terms of this document. Do
22 you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And if I were to decide not to accept it,
25 then you would be allowed to withdraw your plea. Do you

1 under -- did they go over that with you?

2 THE DEFENDANT: Yes. Yes, Your Honor.

3 THE COURT: Okay. Now, do you understand that the
4 offenses that are covered in this Plea Agreement are classified
5 as felony-level offenses under the laws of the United States?

6 THE DEFENDANT: Yes, I understand that.

7 THE COURT: And if I accept this plea, then you will
8 be adjudged guilty of those offenses?

9 THE DEFENDANT: Yes, I understand that.

10 THE COURT: Now, oftenti -- let me ask you this
11 question: You are a United States citizen?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. Now, do you understand that, if
14 you were adjudged guilty of these offenses by my accepting this
15 Plea Agreement, then such adjudication may deprive you of
16 valuable civil rights, such as the right to vote, the right to
17 hold public office, the right to serve on a jury, and the right
18 to possess any kind of firearm?

19 THE DEFENDANT: I never bought a firearm, and I
20 understand.

21 THE COURT: Okay.

22 THE DEFENDANT: The rest of --

23 THE COURT: But if you wanted to buy a firearm, you
24 couldn't now as a result of this. You understand that?

25 THE DEFENDANT: I -- no interest at all.

1 THE COURT: Okay. Mr. Tuckman, I guess the next, has
2 the government -- let me ask you this.

3 MR. TUCKMAN: Yes, sir.

4 THE COURT: Is the United States satisfied that we've
5 covered enough in terms of the voluntariness of the -- the
6 plea?

7 MR. TUCKMAN: Yes, sir, Your Honor. The only one
8 thing I would add, it might go to the voluntariness phase of
9 it, is just that, as set forth in the Plea Agreement, the
10 maximum penalties.

11 THE COURT: That was the next thing I was going into.

12 MR. TUCKMAN: Okay. I wasn't sure what your order
13 would be, so that would be the only thing, Your Honor.

14 THE COURT: Okay.

15 MR. TUCKMAN: I'm satisfied otherwise.

16 THE COURT: And then how do you -- what's the easy --
17 the best way to review the -- Dr. Mascheroni, I have to make
18 sure -- I call it the worst-case scenario, but I have to make
19 sure you understand what's the worst-case scenario in terms of,
20 you know, incarceration, things of that nature. So do you want
21 to just summarize the penalties? Is that the easiest way,
22 or --

23 MR. TUCKMAN: I think --

24 THE COURT: -- do you want me to call -- review a
25 particular part of this document with him?

1 MR. TUCKMAN: Your Honor, I could quickly just
2 summarize it, and then I think we can move along from there.

3 THE COURT: Okay.

4 MR. TUCKMAN: I don't --

5 THE COURT: Dr. Mascheroni, if you would, just listen
6 to what Mr. Tuckman's going to say, and then I'm going to ask
7 you if you understand it, sir.

8 MR. TUCKMAN: And Your Honor, I'm focusing on
9 Paragraph 4 of the Plea Agreement where Dr. Mascheroni
10 acknowledges the maximum penalties, and that is breach of
11 Counts 7, 8 of the Indictment, Counts 1 and 2 of the
12 Information, and Count 3 of the Information. The maximum
13 penalty he faces is imprisonment for a term of ten years, a
14 fine of up to \$250,000, a term of supervised release, a special
15 penalty assessment and restitution as the Court may order.

16 As to the other counts to which he's entering a
17 guilty plea, those being Counts 10 through 15 of the
18 Indictment, he's acknowledged that he understands the maximum
19 penalty on those counts is imprisonment for a period of not
20 more than five years, a fine not to exceed the greater of
21 \$250,000, mandatory period of supervised release, special
22 penalty assessment of a hundred dollars, and restitution as the
23 Court may order.

24 THE COURT: And those are the statutory penalties.

25 MR. TUCKMAN: Yes, they are, Your Honor.

1 THE COURT: All right.

2 MR. TUCKMAN: But those are not the agreement.

3 Excuse me. Of course, we've agreed to lesser penalties under
4 pursuant to Rule 11(c)(1)(C) that Your Honor mentioned earlier.

5 THE COURT: Right. Now, so my specific question to
6 you, Dr. Mascheroni, is do you understand the maximum or the
7 consequences -- well, I should say it this way: Do you
8 understand the maximum penalties under the statute for the
9 offenses that are -- that you're pleading guilty to?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay. And that's not the penalties that
12 are covered in this Plea Agreement, but it's the statutory
13 penalties. You understand the distinction?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Then the follow-up question to
16 that is you understand, sir, the possible consequences of
17 pleading guilty to these charges?

18 THE DEFENDANT: That not completely, but I don't
19 think I need to take your time on that, so I will say yes.

20 THE COURT: Okay. Well, again, my -- I'm at your
21 disposal, so --

22 THE DEFENDANT: To be honest with you, I would have
23 preferred a bench trial with you, but unfortunately, I made the
24 decision to plead.

25 THE COURT: Okay. Now, this is an 11(c)(1)(C) Plea

1 Agreement that we've talked about, but in the course of
2 conferring with your counsel, did they talk to you about the
3 United States Sentencing Guidelines and, if you were to proceed
4 to trial, how those, the United States Sentencing Guidelines,
5 would come into play?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Now, there's a Waiver of Appellate
8 Rights in this; is that correct?

9 MR. TUCKMAN: That's right, Your Honor.

10 THE COURT: What paragraph is that in?

11 MR. TUCKMAN: That is on Page 28, Paragraph 15.

12 THE COURT: On Page 28, Dr. Mascheroni, there's a
13 paragraph that says, "Waiver of Appellate Rights." If you had
14 entered -- let's say you went to trial and you were convicted
15 or if you just pled straight up to the Indictment and then, at
16 the time of sentencing, after the conclusion of the sentencing,
17 then a defendant typically has a right to file an appeal and
18 appeal the sentence as well as, you know, rulings that were
19 made by the trial judge to the Court of Appeals, and you
20 understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, with that understanding,
23 Paragraph 15 basically, you know, to put this in a short
24 summary, if I accept this Plea Agreement and I sentence you in
25 accordance with this Plea Agreement, then you will have waiven

1 or given up your right to appeal the sentence. Do you
2 understand that, sir?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. In the federal system, do you
5 understand that parole has been abolished, so if you're
6 sentenced to prison, you will not be released on parole?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Now, the factual basis is that's
9 Paragraph 7; is that right?

10 MR. TUCKMAN: That's right, Your Honor, beginning on
11 Page 4.

12 THE COURT: All right. Dr. Mascheroni, when the --
13 on Page 4, Paragraph 7, and going on through on Page 5, Page 6,
14 Page 7, Page 8, Page 9, Page 10, Page 11, Page 12, Page 13,
15 Page 14, Page 15, and on Page 16 down to the part in bold that
16 says, "Stipulations," are the facts contained in those
17 paragraphs, are those facts true, sir?

18 THE DEFENDANT: Within my understanding. I am not a
19 lawyer. I am a theoretical physicist, and there is an
20 uncertainty because of that, because I think facts should be
21 perhaps better defined, but that is not the case in the law.
22 In terms of my understanding, this represents the truth.

23 THE COURT: Okay. And so if this represents the
24 truth, then you admit --

25 THE DEFENDANT: Right.

1 THE COURT: -- to these facts?

2 THE DEFENDANT: I hope at the time of the sentencing
3 I'm going to be able to provide some details that are going to
4 be useful to you to see what I just stated to you. That I --
5 I -- this does represent the truth. This is the plea. I
6 decided this is it, and I'm going to explain in better detail
7 what cannot be explained in this way. If that is possible,
8 Your Honor, I thank you very much for your time.

9 THE COURT: Now, does that satisfy the government?

10 MR. TUCKMAN: Yes, Your Honor. I would just also add
11 on the record that I know that Dr. Mascheroni has reviewed
12 Paragraph 7 in great detail with his attorneys and fully
13 understands what's contained therein. I just want to make sure
14 we're -- we're clear on that also.

15 THE COURT: And Mr. Winterbottom and Mr. Cooper, in
16 terms of the factual basis to support the plea, both of you
17 either collectively or separately have spent considerable time
18 with Dr. Mascheroni concerning the factual recitations in this
19 document?

20 MR. WINTERBOTTOM: I and we have.

21 THE COURT: And you're satisfied that he understands
22 it?

23 MR. WINTERBOTTOM: I am satisfied that he understands
24 it.

25 THE COURT: Okay. And I did neglect to ask

1 Mr. Winterbottom and Mr. Cooper this question, but based on
2 your knowledge of the case and your review of the discovery --
3 and I know, Mr. Cooper, you, in terms of the discovery, you
4 have spent more time on that, reviewing that matter than
5 Mr. Winterbottom, but are both of you satisfied that, if the
6 case proceeded to trial, the government could make a prima
7 facie case on the counts charged in the Indictment and the
8 Information to which Dr. Mascheroni is pleading?

9 MR. COOPER: Yes, Your Honor.

10 MR. WINTERBOTTOM: Yes, Your Honor.

11 THE COURT: Okay. Mr. Tuckman.

12 MR. TUCKMAN: Yes, sir.

13 THE COURT: Is there anything before I take
14 Dr. Mascheroni's plea?

15 MR. TUCKMAN: Your Hon --

16 THE COURT: Is there anything else you wish me to --
17 that we've overlooked from the government's perspective you
18 think I need to inquire about?

19 MR. TUCKMAN: Your Honor, I don't think you have. I
20 just want to make clear, because Dr. Mascheroni's admitted that
21 he's read this entire document and gone over it with his
22 lawyers, but I think it might be helpful just to point out a
23 couple of the highlights such that he understands his rights to
24 go to trial.

25 THE COURT: You know what, you're right. Let me do

1 that.

2 MR. TUCKMAN: And Your Honor, it's contained
3 Paragraph 2 of the Plea Agreement.

4 THE COURT: Sure.

5 MR. TUCKMAN: And I know he's gone over it in great
6 detail, but I think it would be helpful.

7 THE COURT: I agree. Dr. Mascheroni, let me review
8 with you what these rights, additional rights you have as a --
9 as a citizen or that anyone in this country charged with a
10 crime, and I'm talking about Paragraph 2. First, do you
11 understand that you have an absolute right to plead not guilty
12 to all the offenses charged against you and to persist or
13 maintain in that not-guilty plea?

14 THE DEFENDANT: I understand that, Your Honor.

15 THE COURT: Okay. Do you also understand that, if
16 you elected to maintain your not-guilty plea and you went to a
17 trial, whether it's a jury trial or a bench trial, that -- that
18 the government has the burden of proof? That is, the
19 government has to prove each -- prove each of the essential
20 elements of all the offenses charged against you, and the
21 proof, it's a high standard. It's called a beyond reasonable
22 doubt standard. Do you understand that, sir?

23 THE DEFENDANT: Yes, Your Honor, I understand that.
24 I don't understand how much is the resolution that one can
25 apply to facts. The process, because the process is complex

1 and all of that and so on and so forth, so there is a certain
2 level of uncertainty, and I was satisfied with the explanation
3 that Dick provided to me, what is the level of uncertainty that
4 will appear if I go to a trial, and I am convinced, because of
5 that level of uncertainty, that I am making the right decision
6 to plea.

7 THE COURT: Okay. And you feel this overall, after
8 taking all of this into consideration, that this Plea
9 Agreement's in your best interest?

10 THE DEFENDANT: I got that explanation very
11 scholastically and very clearly stated from Dick and also from
12 Bob.

13 THE COURT: Okay. Now, in terms of, again, if had
14 you decided you wished to go to trial, you have the --
15 understand that you have the right to the assistance of your
16 counsel for your defense at trial and at all stages of the
17 proceeding; is that right, sir?

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: You also understand that, if you went to
20 trial, you would have the right to see and hear all the
21 witnesses and to have them cross-examined in your defense?

22 THE DEFENDANT: We -- I understand that there are
23 limitations, but I understand.

24 THE COURT: Okay. And that if you went to trial, you
25 could testify yourself or you could exercise your right to

1 remain silent? Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. And you could also, if you went to
4 trial, you could compel witnesses, subpoena witnesses to come
5 into court and testify on your behalf if you wanted them to?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Or do you also understand that, if
8 you went to trial and you decided not to testify or not to call
9 any witnesses and put on any evidence at all, that those facts
10 could not be used against you?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right.

13 THE DEFENDANT: I understand.

14 THE COURT: And then do you understand that, by
15 entering into this Plea Agreement and if I accept your plea,
16 there will be no trial?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And that you will have given up and
19 waived your right to a trial as well as these other rights
20 associated with the trial which I just asked you about?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. Thank you for calling that to my
23 attention, Mr. Tuckman.

24 MR. TUCKMAN: Certainly, sir.

25 THE COURT: I overlooked that section. So did we --

1 was there anything else that we need to inquire about?

2 MR. TUCKMAN: This -- this is not required, Your
3 Honor, but I think it makes sense to just put it on the record
4 for Dr. Mascheroni's benefit since we alerted him to the
5 maximum penalties, to just put on the record the (c)(1)(C)
6 penalties that we agreed to as to imprisonment so it's on the
7 record.

8 THE COURT: Right, and the maximum was -- there was a
9 range after -- that will be determined at a -- and I should ask
10 this. Now, Dr. Mascheroni, after today, I'll order a
11 presentence report to be prepared by the Probation Office where
12 there's going to be a number of facts in the presentence
13 report, and then there's a sentencing hearing, and you
14 understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And then at that time at the sentencing
17 hearing, there's a range. I guess maybe for a lack of better
18 term, I'll call a high/low.

19 MR. TUCKMAN: Sure.

20 THE COURT: And so your lawyers will be advocating
21 and presenting whatever argument or evidence they wish for a
22 sentence on the low end, and that could include either you
23 testifying or you making a presentation to the Court, and then
24 the United States will be arguing perhaps sentencing on the
25 high end. Do you understand that?

1 THE DEFENDANT: I do.

2 THE COURT: Okay. And so that will be on down the
3 road, but -- but anyway, there will be a presentence report
4 that'll have to be prepared. So in terms of the range,
5 Mr. Tuckman, what is the range in this 11(c)(1)(C) Plea
6 Agreement?

7 MR. TUCKMAN: Your Honor, as to Counts 10 through 15
8 of the Indictment, the imprisonment range that we have agreed
9 to is not less than 24 months nor more than 60 months, which
10 are going to -- it's spelled out in the Plea Agreement how
11 they're going to run concurrent to the other counts. As to the
12 other counts to which Dr. Mascheroni will be entering guilty
13 pleas, the term we have agreed to is not less than 24 months of
14 imprisonment nor more than 66 months of imprisonment, and
15 again, those counts are to run current with each other.

16 MR. WINTERBOTTOM: Sixty. Sixty.

17 MR. TUCKMAN: Sixty-six.

18 MR. WINTERBOTTOM: Sixty-six for the first, but 60
19 for the --

20 MR. TUCKMAN: Yeah, I did --

21 MR. WINTERBOTTOM: -- 10 through 15.

22 MR. TUCKMAN: I did it backwards.

23 MR. WINTERBOTTOM: Oh, you did. Okay.

24 MR. TUCKMAN: Yeah, so the two ranges we have, Your
25 Honor, are 24 to 60 months and 24 to 66 months. I just did it

1 backwards from the Plea Agreement, --

2 THE COURT: Okay.

3 MR. TUCKMAN: -- which threw Mr. Winterbottom. I
4 apologize for that.

5 MR. WINTERBOTTOM: Confused me.

6 THE COURT: So, doctor, do you understand that,
7 Dr. Mascheroni?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: So under this Plea Agreement, the
10 worst-case scenario on incarceration is 66 months, and the
11 minimum is 24 months.

12 THE DEFENDANT: Correct. I understand.

13 THE COURT: Okay. All right. Mr. Winterbottom, from
14 your perspective, is there anything else I need to inquire of
15 Dr. Mascheroni other than taking his plea?

16 MR. WINTERBOTTOM: No, Your Honor.

17 THE COURT: Mr. Cooper, from your perspective?

18 MR. COOPER: No, Your Honor. Thank you.

19 THE COURT: And Mr. Tuckman, is the government
20 satisfied that I covered everything?

21 MR. TUCKMAN: Yes, sir, Your Honor.

22 THE COURT: All right. Dr. Mascheroni, then, in
23 terms of the -- the counts, the charges that are covered in
24 this Plea Agreement, those by Indictment and those by
25 Information, how do you plead to those charges, sir, guilty or

1 not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: And Mr. Tuckman, is it the request of the
4 United States that this Plea Agreement be accepted?

5 MR. TUCKMAN: Yes, sir, it is, Your Honor.

6 THE COURT: And Mr. Winterbottom?

7 MR. WINTERBOTTOM: Yes, sir.

8 THE COURT: All right. It'll be the finding of the
9 Court in the case of United States versus Pedro Leonardo
10 Mascheroni that the defendant is fully competent and capable of
11 entering an informed plea, that the defendant is aware of the
12 nature of the charges and the consequences of the plea, and
13 that the plea of guilty to those charges by Information and
14 those charges by Indictment that are contained in the Plea
15 Agreement, that that guilty plea is a knowing and voluntary
16 plea supported by an independent basis in fact containing each
17 of the essential elements of the offenses. The defendant's
18 plea is therefore accepted, and the defendant is now adjudged
19 guilty of the offenses to which he entered his guilty plea
20 pursuant to this Plea Agreement.

21 Now, I conferred with counsel, and it's my
22 understanding that Dr. Mascheroni has been compliant with
23 pretrial conditions of release; is that right, Mr. Selph?

24 THE PROBATION OFFICER: That's correct, Your Honor.
25 I've had no issues with him, and I make regular unannounced

1 home visits over there, and he's always working on his case
2 over there.

3 THE COURT: Okay.

4 THE PROBATION OFFICER: So I've had no compliance
5 issues.

6 THE COURT: All right. And Mr. Tuckman, I understand
7 that it's the position of the United States that the United
8 States government is -- will not object to Dr. Mascheroni
9 remaining out on the same pretrial conditions of release.

10 MR. TUCKMAN: Yes, Your Honor. Before this hearing,
11 I told both Mr. Winterbottom and Mr. Cooper that we would defer
12 to Probation's position, and hearing it, that's fine, Your
13 Honor.

14 THE COURT: All right. Then I don't think I need to
15 hear anything else from defense counsel, so I will make the
16 finding, based on Dr. Mascheroni's satisfactory performance
17 while under pretrial supervision, that he's neither a danger to
18 the community nor a flight risk, and noting that the government
19 does not object, then I will allow Dr. Mascheroni to remain on
20 the same pretrial conditions of release that -- that were in
21 effect.

22 And I'll go ahead and order a presentence report to
23 be prepared by the Probation Office, and counsel, I anticipate
24 that we'll need some time for the sentencing hearing, so what I
25 think is towards -- once the presentence report is prepared, I

1 think what I'll do is have a telephonic scheduling conference,
2 and then we'll get it on the calendar and I'll ascertain from
3 counsel the amount of time that you believe's sufficient for --
4 for the sentencing hearing.

5 MR. TUCKMAN: That makes sense, Your Honor.

6 THE COURT: All right. Anything else for today?

7 MR. WINTERBOTTOM: No, Your Honor.

8 THE COURT: All right. Thank you, Dr. Mascheroni.

9 THE DEFENDANT: Thank you.

10 MR. COOPER: Thank you, Your Honor.

11 MR. TUCKMAN: Thank you, Your Honor.

12 THE COURT: We'll be in recess.

13 (Recess at 2:47 p.m.)
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REPORTER'S CERTIFICATE

I, THOMAS L. GARRETT, Official Court Reporter for the United States District Court, District of New Mexico, hereby certify that I reported the proceedings in 10CR2626 and that the pages contained herein are a true and correct transcript of the proceedings.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND this 27th day of September 2013.

Thomas L. Garrett, CCR, FCRR
Official Court Reporter
CCR No. 255